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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,137	10/24/2003	Mesut Gunduc	ORACL-01119US1	1772

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EXAMINER	
SHERR, CRISTINA O	

ART UNIT	PAPER NUMBER
3685	

NOTIFICATION DATE	DELIVERY MODE
03/31/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

OFFICEACTIONS@FDML.COM

Office Action Summary	Application No.	Applicant(s)	
	10/693,137	GUNDUC ET AL.	
	Examiner	Art Unit	
	CRISTINA SHERR	3685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 November 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,5-9,12,13,16-20,29 and 30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 2, 5-9, 12, 13, 16-20, 29, and 30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This Office action is in response to Applicant's Amendment filed November 30, 2009. Claims 1, 2, 5-9, 12, 13, 16-20, 29, and 30 are pending in this case. Claims 1, 12, and 29 are currently amended.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 31, 2009 has been entered.

Response to Arguments

3. Applicant's arguments with respect to claims 1, 2, 5-9, 12, 13, 16-20, 29, and 30, as currently amended, have been considered but are moot in view of the new ground(s) of rejection.

Remarks

4. Regarding claim 29, note that language directed to the structure that does not affect the method, does not carry patentable weight. (e.g. "that operates . . .", "that provides . . .", "to provide . . .", "that employs . . .", etc.) (Ex parte Pfeiffer, 135 USPQ 31 (BdPatApp&Int 1961))

5. Further regarding claim 29, note that a wherein clause that merely states the result of the limitations in the claim adds nothing to the patentability or substance of the

claim. *Texas Instruments Inc. v. International Trade Commission* 26, USPQ2d 1010 (Fed. Cir. 1993); *Griffin v. Bertina*, 62 USPQ2d 1431 (Fed. Cir. 2002); *Amazon.com Inc. v. Barnesandnoble.com Inc.*, 57 USPQ2d 1747 (CAFC 2001).

6. Also regarding claim 29, note that "can . . . " language does not further limit the claim. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. MPEP §2106 II C. Also, it has been held that actions that may or may not be done are indefinite and does not distinguish the claim from the prior art. *In re Collier*, 158 USPQ 266 (CCPA 1968).

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 12, 13, and 16-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

9. A claimed process must:

(1) be tied to a particular machine or apparatus (machine implemented); or (2) particularly transform a particular article to a different state or thing. A method claim that does not require machine implementation or does not cause a transformation will fail the test and should be rejected under § 101. However, the mere presence of a machine tie or transformation is not sufficient to pass the test.

10. When a machine tie or transformation has been identified, it must be further determined that the tie is to a particular machine or the particular transformation is of a

particular article. Additionally, the particular machine tie or particular transformation must meet two corollaries to pass the test for subject matter eligibility. First, the use of the particular machine or transformation of the particular article must impose a meaningful limit on the claim's scope. So, a machine tie in only a field-of-use limitation would not be sufficient. Second, the use of the particular machine or the transformation of the particular article must involve more than insignificant "extra-solution" activity. If the machine or transformation is only present in a field-of-use limitation or in a step that is only insignificant "extra-solution" activity, the claim fails the M-or-T test, despite the presence of a machine or a transformation in the claim. *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008). See also http://www.uspto.gov/patents/law/comments/2009-08-25_interim_101_instructions.pdf.

11. In this case, claim 12 recites "providing a Global Update Protocol . . " where no machine or apparatus is tied to the step, other than insignificant "extra-solution" activity. Also, there is no transformation of a particular article to a different state or thing. For this reason, independent claim 12 and its dependent claims 13 and 16-20 are rejected under § 101.

Claim Rejections - 35 USC § 112

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 1, 2, and 5-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

14. An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed. *In re Zletz*, 13 USPQ2d 1320 (Fed. Cir. 1989). Also, during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow. *Id.*

15. In this case, claim 1 recites a "Java-based cluster server" which is most likely a machine or apparatus. However, the various interfaces and plugins in claim 1 under the broadest reasonable interpretation of the claim are likely software. Thus it is unclear whether claim 1 is hardware or software or some combination thereof.

16. It has been held that a claim that recites both an apparatus and a method for using said apparatus is indefinite under section 112, paragraph 2, as such a claim is not sufficiently precise to provide competitors with an accurate determination of the 'metes and bounds' of protection involved. *IPXL Holdings LLC v. Amazon.com Inc.,* 77 USPQ2d 1140 (CA FC 2005); *Ex parte Lyell*, 17 USPQ2d 1548 (B.P.A.I. 1990). A single claim which purports to be both a product or machine and a process is ambiguous and is properly rejected under 35 USC 112, second paragraph, for failing to particularly point out and distinctly claim the invention. *Ex Parte Lyell*, 17 USPQ2d 1548 (B.P.A.I. 1990).

17. In this case, claim 1 recites "wherein the resource interface accepts . . ." thus reciting both an apparatus and steps for its use. Claim 1 is, therefore, ambiguous.

18. For this reason, claim 1 and its dependent claims 2 and 5-9 are rejected under 35 U.S.C. 112, second paragraph.

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

20. Claims 1, 2, 5-9, 12, 13, 16-20, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kampe et al *US 6,854,069) in view of Pace et al (US 2003/0050932) further in view of Carr (4,718,002).

21. Regarding claims 1, 12, and 29 –

22. Kampe teaches a system for high availability clustering of a group of computer nodes (abs, col 2 ln 20-30y) comprising:

a cluster server (col 2 ln 55-57), executing on a computer, wherein said cluster server provides an application access to a set of resources of multiple resource types (col 7 ln 16-17) , wherein two or more resource types correspond to two or more different application servers within a cluster, wherein said resources, and application servers, are available at one or more computers in the cluster (col 5 ln 55-60), and wherein the resources, and application servers, are grouped by resource type within the set of resources; (col 4 ln 55-67, col 5 ln 1-26)

a resource interface provided by cluster server that provides an abstraction layer (col 7 ln 45-50) and allows the cluster server to receive uniform requests from the application and communicate the requests to said set of resources; (col 9 ln 55-60)

a plurality of plugins that are plugged into the resource interface to provide a set of application-specific callbacks from the cluster server to the set of resources, (col 7 ln 20-21) wherein the system includes a plugin for each resource type corresponding to the different application server (col 7 ln 19-20), and wherein each plugin implements a resource API to encapsulate the plugin's particular resource type-specific behavior (col 7 ln 30) and to isolate the cluster server from said behavior while providing access to its pool of resources (col 7 ln 60-61) ; and

an interface provided by said cluster server (col 7 ln 47, col 9 ln 57), wherein the interface provides an interface between the cluster server and a database; (col 7 ln 40-50)

wherein the resource interface accepts additional plugins that are plugged into the resource interface for other resource types; (col 7 ln 20-25, col 9 ln 50-60, col 10 ln 30-40).

23. Kampe discloses updating servers and management services. (col 10 ln 30-40, col 16 ln10-20, col 18 ln 40-50) but not specifically a GLobal Update Protocol (GLUP) mechanism that employs a distributed global lock with sequence numbers to serialize propagation of global events across active members of the cluster, wherein each global update is associated with a unique sequence number such that each said active member of the cluster has an identical view of an ordering of the global events. Carr, however, does. (e.g. abs, col 7 ln 15-25, col 9 ln 35-col 10 ln 35). It would, therefore, be obvious for a practitioner of ordinary skill in the art to employ such a protocol with the

cluster serer of Kampe. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

24. Kampe discloses facilitating a wide ranger of management protocols, including a Java management extensions. (col 20 ln 8-22). However, Kampe does not specifically disclose wherein the cluster server is a java-based server and transaction processing system. Pace, however, does. (par 313, 685).

25. At the time of the invention it would have been obvious to one of ordinary skill in the art to combine Kampe with the teachings of Pace to provide the benefits of high availability clustering to other specific types of resources.

26. Regarding claims 2 and 13 –

27. Kampe and Pace disclose as previously discussed. Kampe discloses wherein each cluster server includes a heartbeat interface that provides heartbeat information to other cluster servers at said other application servers. (col 9 ln 19-20)

28. Regarding claims 5 and 16 –

29. Kampe discloses a cluster administration utility for accessing and administering the cluster server using remote method invocation calls. (col 23, ln 2, col 20 ln 20)

30. Regarding claims 6 and 17 –

31. Kampe discloses wherein each resource has a resource type associated with it. (col 7 ln 15-16) (col 7 ln 15-16)

32. Regarding claims 7 and 18 –

33. Kampe discloses wherein resources are the object instances of their respective resource types. (col 7 ln 25-30)

34. Regarding claims 8 and 19–

35. Kampe discloses wherein a resource is any of a computer, internet protocol address, disk, database, or file system or application. (col 6 ln 35-40)

36. Regarding claims 9 and 20 –

37. Kampe discloses wherein the cluster server defines resource groups that include clusters of resources. (col 13 ln 20-30)

38. Regarding claim 30 –

39. Kampe discloses wherein, for each application server type, an appropriate plug-in is loaded at the time the first application server of a defined type is created (col 5 ln 35-40, and wherein a handle is created to the specific resource instance (col 14 ln 53-55), which can then be used by the cluster server in subsequent method calls. (col 14 ln 50-55, col 7 ln 20-25).

Conclusion

40. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

41. Jardine et al (US 5,884,018) disclose a method and apparatus for distributed agreement on processor membership in a multi-processor system.

42. Fakhouri et al (US 7,464,147) disclose cluster management of resource groups.

43. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CRISTINA SHERR whose telephone number is (571)272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

44. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin L. Hewitt, II can be reached on (571)272-6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

45. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CRISTINA OWEN SHERR
Examiner
Art Unit 3685

/Calvin L Hewitt II/
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